

RULES OF PROCEDURE

ZONING BOARD OF ADJUSTMENT ORANGE COUNTY, NORTH CAROLINA

I. General Rules

Amended 6/11/90 A. The Orange County Zoning Board of Adjustment shall be governed by the terms of Article 18, Part 3 of Chapter 153A of the General Statutes of North Carolina and by the Zoning Ordinance of Orange County, North Carolina, adopted February 6, 1967, and as amended. All Board members shall be thoroughly familiar with these laws.

II. Officers and Duties

Amended 2/12/68
6/12/78
6/11/90 A. Chair

The Chair shall be elected by majority vote of the membership of the Board from among its members. The term of office shall be for one year, and until a successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. Subject to these rules, the Chair shall decide upon all points of order of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matter before the Board. The Chair shall swear in all witnesses who are to testify at a hearing.

Amended 6/11/90 B. Vice Chair

A Vice Chair shall be elected by the Board from among its members in the same manner and for the same term as the Chair. The Vice Chair shall serve as Acting Chair in the Chair's absence, and at such times the Vice Chair shall have the same powers and duties as the Chair.

C. Secretary

A Secretary shall be appointed by the Chair of the Board, either from within or outside its membership, to hold office during the term of the Chair and until a successor secretary shall have been appointed. The Secretary shall be eligible for reappointment. The Secretary, subject to the direction of the Chair and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, and shall generally supervise the clerical work of the Board. The Secretary shall keep in a permanent volume the minutes of every meeting of the Board. These shall be and show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote. If the Secretary is chosen from outside the membership of the Board, the Secretary shall not be eligible to vote upon any matter.

III. Alternate Members

Amended 6/11/90 Alternate members of the Board shall attend all meetings and hearings of the Board unless otherwise notified. A regular member, on receiving notice of a meeting which he or she cannot attend or upon learning that he or she will be unable to participate in a meeting, shall promptly give notice to the Secretary of the Board that he or she is unable to attend or unable to participate. Where, because of the inability of a regular member to serve or to participate, the attendance of an alternate member is necessary to make quorum as defined by Section V-D below, an alternate member shall have all the powers and duties of a regular member.

IV. Members

- Amended 6/11/90
- A. Membership on the Zoning Board of Adjustment shall be governed by the terms of Article 18, Part 3 of Chapter 153A of the General Statutes of North Carolina.
 - B. Members of the Board may be removed for cause.
 - C. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board.
 - D. No Board member shall take part in the hearing, consideration or determination of any case in which that member is personally or financially interested.
 - E. No Board member shall vote on any matter deciding an application or appeal unless that member has attended the public hearing on that application or appeal.
 - F. No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that members may receive and seek information pertaining to the case from any other member of the Board and its Secretary prior to the hearing.
 - G. Members of the Board will not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.
 - H. Each member of the Board shall be thoroughly familiar with the provisions of the Zoning Ordinance.
- Amended 6/11/90
- I. At any meeting which an alternate member is called upon to attend, alternate members shall have the same powers and duties as regular members.
- Amended 6/11/90
- J. Except at the election of officers, at no time shall more than five members (including alternate members) officially vote in any meeting or hearing.

V. Meetings

Amended 6/12/78
6/11/90
2/3/10
4/16/2018

A. Regular Meetings

Regular meetings of the Board shall be held on the second Monday of each month at 7:00 p.m.¹ in the Orange County West Campus Office Building at 131 W. Margaret Lane, Hillsborough, North Carolina; provided, that if the Chair so directs, meetings may be held at any other place in the County.² Meetings will adjourn at 10:30 p.m. unless otherwise voted.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chair. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given, by the Secretary or by the Chair, to each member of the Board.

C. Cancellation of Meetings

Whenever there are no appeals, applications for exceptions or variances, or other business for the Board, or whenever so many regular and alternate members notify the Secretary of inability to attend that a quorum will not be available, the Secretary may dispense with a regular meeting by giving written or oral notice to all members prior to the time set for the meeting.

Amended 1/11/99

D. Quorum

A quorum of the Board, necessary to conduct any business of the Board shall, consist of four members.

The concurring vote of four of the members of the Board shall be necessary in order:

- a) To reverse any order, requirement, decision or determination of any administrative official charged with enforcement of this ordinance, or
- b) To decide in favor of the applicant any matter upon which it is required to pass by this ordinance, or
- c) To effect any variation in this ordinance.

A simple majority of those present shall be necessary to conduct routine business of the Board.

Amended 6/11/90

E. Conduct of Meetings

All meetings of the Board shall be conducted in compliance with the North Carolina Open Meetings Law, North Carolina General Statutes 143-319.9 et

¹ Most County meetings (i.e. BOCC meetings, Planning Board, etc.) begin at 7:00 p.m.. Staff is suggesting the Board consider an amendment to the Rules of Procedure moving the time for the meeting as well for consistency.

² Staff is highlighting existing language on where the meeting will be held. The BOCC is considering a request to require all Board of Adjustment meetings to be taped. Staff will know more after the April 17, 2018 BOCC regular meeting and advise members accordingly.

seq. The Board shall give public notice of its meetings also as provided in the Open Meetings Law. The order of business at regular meetings shall be as follows:

- a. roll call;
- b. reading of minutes of previous meetings;
- c. hearing of cases;
- d. reports of committees;
- e. unfinished business;
- f. new business; and
- g. consideration and determination of cases heard previously.

Amended 6/11/90 F. Failure of the appellant to appear, without notice of cancellation by 7:45 p.m. on the day of the hearing shall result in a 60-day delay before the hearing can be rescheduled.

VI. Appeals and Applications

A. Types of Appeals

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Officer. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Zoning Ordinance of Orange County, North Carolina. In deciding appeals, it may hear both those based upon an allegedly improper and erroneous interpretation of the ordinance and those based upon alleged hardship resulting from the strict interpretation of the ordinance.

Amended 6/11/90 B. Procedure for Filing Appeals

No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the decision, determination or directive was made by the Zoning Officer and record of that action filed in the office of the Zoning Officer. No appeal shall be considered by the Board unless a completed application is received. All applications for hearings shall be filed with the Secretary, or with the Zoning Officer, who shall act as Secretary for the Board in receiving this notice. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an appeal or an application shall be considered as having been filed. Any resident of the area of zoning jurisdiction may appeal from any order or act of the Zoning Officer pertaining to enforcement of the Zoning Ordinance.

C. Hearings

Amended 6/11/90 1. Time

After receipt from the Zoning Officer or Secretary of the completed notice of appeal or application, the Secretary shall schedule a time for a hearing, which shall be heard at either a regularly scheduled meeting or at a special meeting.

Amended 6/11/90 2. Notice

The Board shall give public notice of the hearing as required by the North Carolina Open Meetings Law and as specified in the Orange County Zoning Ordinance.

Notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

3. Conduct of Hearing

Any party may appear in person or by agent or by attorney at the hearing. The order of business for each hearing shall be as follows:

- (a) the Chair, or such person as the Chair shall direct, shall give a preliminary statement of the case;
- (b) the applicant shall present the arguments in support of his case or application; .
- (c) persons opposed to granting the application shall present the argument against the application;
- (d) both sides will be permitted to present rebuttals to opposing testimony;
- (e) the Chair shall summarize the evidence which has been presented, giving the parties an opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case.

4. Rehearings

An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been substantial change in the facts, evidence, or conditions in the case. A rehearing shall be denied by the Board if in its judgment there has been no substantial change in the facts, evidence, or conditions in the case. If the Board finds that there has been such a change, it shall thereupon treat the request in the same manner as any other application.

Amended
6/11/90

D. Decisions

When the Board of Adjustment shall have denied an application for a Special Use Permit, the Board of Adjustment shall not receive another application for the same or similar petition affecting the same property or a portion thereof until the expiration of a one-year period, extending from the date of denial.

1. Time

Decisions by the Board shall be made not more than thirty-six (36) days from the date of the hearing.

Amended
6/11/90

2. Form

Written notice by registered or certified mail of the decision in a case shall be given the applicant by the Zoning Officer within five (5) working days of the Board's actions. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board. The record shall show the reasons for the decision, with a summary of the evidence introduced and the findings of fact made by the Board.

Amended
6/11/90

3. Voting at Hearings

Required voting on matters before the Board shall be in accordance with applicable State statutes and the provisions of the Orange County Unified Development Ordinance (UDO).

4. Public Record of Decisions

The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

VII. Amendments

Amended
6/12/78

- A. These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four-fifths (4/5ths) members of the Board, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.